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09/480,343	01/10/2000	Paul Allan Ryder	9D-EC-19343-Ryder	4209
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JOHN S. BEULICK ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE SUITE 2600 ST. LOUIS, MO 63102			EXAMINER JONES, HUGH M	
			ART UNIT 2128	PAPER NUMBER
			NOTIFICATION DATE 07/09/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

# Office Action Summary

**Application No.**

09/480,343

**Applicant(s)**

RYDER, PAUL ALLAN

**Examiner**

Hugh Jones

**Art Unit**

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 and 27-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25, 27-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### Introduction

1. Claims 1-25, 27-41 of U. S. Application 09/480,343 filed on 10-February-2000, are presented for examination.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-25, 27-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda et al. in view of Allsop et al. (5,970,472; Applicant's IDS).

5. Fukuda et al. disclose managing building options, comprising:

*obtaining from a first user an indication of at least one available new building option for constructing a new building;*

*causing the at least one available new building option to be electronically accessible to a second user;*

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*providing information electronically on the at least one available new building option to the second user;*

*obtaining electronically from said the second user an indication of at least one choice from among the at least one available new building option; and*

*providing the indication of the at least one choice to said the first user;*

*wherein the indication of the at least one available new building option is obtained electronically;*

*wherein the indication of the at least one choice is provided to the first user electronically;*

*Fukuda: a networked interactive VR system for home and kitchen layout for customers. See abstract: "a Virtual Reality (VR) technology application, a networked VR-supported design system of a kitchen layout. This networked VR system was developed on personal computers to allow customers to design at home. With the VR system, customers can have a pseudo-experience of their "virtual kitchen", modify the design of the kitchen, and make decisions by being provided with a good idea of their potential purchase. The VR system will also play an important role in user interface in the House Design Advisory System. This system gives advice on house design, as well as on kitchen layout design, according to the customers' diversified lifestyles." See col. 2, page 93: "The VR allows customers to examine a design and make changes at an early stage in the process. Examples of VR applications are to be found in design, prototype, and space layout planning." See section 2 (layout design in the showroom); section 4 (VR system on the internet); section 5 (VR systems for customers))*

#### **4 PUTTING VR SYSTEMS ON THE INTERNET**

**We extend the VR system to be accessed on the Internet and to correspond to the changing needs and values of consumer.**

- The interface on the World Wide Web appears.
- A customer looks at the interface and selects each product interactively (1).
- If he/she wants to know the more information of a component product such as a function, a price, a size, and a photograph, he/she can see by clicking the product name. The detailed information including behavior are shown using multimedia (2).
- Each component product is selected over and over. When all products are selected, he/she may click the button named "finished!".
- The selected products are represented (3). If he/she wishes to experience the virtual world, he may click the button named "VR". Then he/she can experience the virtual world and review the first design with the existing photograph together (4).

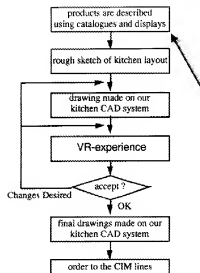


Figure 1: System Kitchen Planning Process

Figure 6: design process at home. 1) A customer looks at the interface on the World Wide Web and selects each product interactively; 2) If he/she wants to know the more information of a component product, he/she can see by clicking the product name; 3) When all products are selected, they are represented; 4) He/She can experience the virtual world and review the first design with existing photograph together; 5) If he/she wants to replace a component product, a design alternative palette is appeared by clicking the product in the virtual world; 6) When he/she selects a favorite product in the palette, it is loaded from a database on the network; 7) After designing, if he/she wishes, the VRML data is sent to the showroom; Gray Area) A system is under development employing a GA or AI..

wherein the first user inputs said the indication of the at least one available new building option at a first computing unit and said the second user inputs the indication of the at least one choice from among the at least one available new building option at a second computing unit coupled to the first computing unit via a communications network;

wherein the communications network is a global computer network;

wherein the at least one available option is electronically accessible to said the second user only if said the second user first electronically transmits a valid password.

#### 4 PUTTING VR SYSTEMS ON THE INTERNET

We extend the VR system to be accessed on the Internet and to correspond to the changing needs and values of consumer.

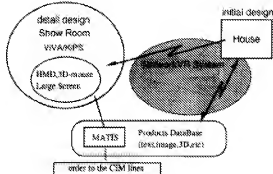


Figure 4: Network VR System

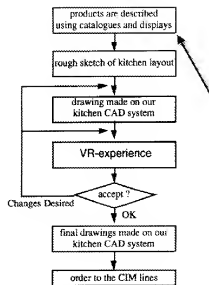


Figure 1: System Kitchen Planning Process

wherein the at least one available new building option comprises at least one building component;

further comprising electronically providing information on the at least one building component to said the second user;

wherein the at least one building component comprises a household appliance, and wherein the information comprises information relating to said the household appliance;

(Note fig. 1 and col. 2, page 95):

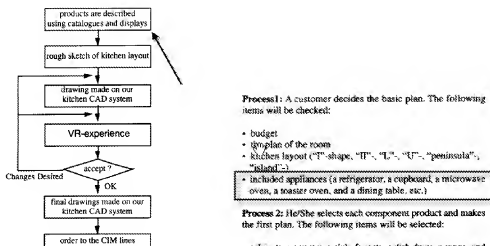


Figure 1: System Kitchen Planning Process

wherein the information comprises pricing information;

wherein the information comprises an image of the household appliance;

wherein said the information comprises performance information of said the household appliance;

further comprising electronically providing information on the at least one available new building option to said the second user;

wherein said the information comprises product category information;

(page 95, col. 2):

**Process 1:** A customer decides the basic plan. The following items will be checked:

- budget
- room-plan of the room
- kitchen layout ("T"-shape, "H"-, "L"-, "U"-, "peninsula"-, "island"-)
- included appliances (a refrigerator, a cupboard, a microwave oven, a toaster oven, and a dining table, etc.)

**Process 2:** He/She selects each component product and makes the first plan. The following items will be selected:

- cabinets, a counter, a sink, faucets, a dish dryer, a range, and a hood

page 96:

- Using the Anchor node, the information such as a size and a ~~picture~~ of component products can be added. We can make hyper links between a 3-D object and a text, an image, a movie, a sound, and other 3-D objects.
- Using the Inline node, the necessary 3-D objects can be read from other database on the Internet.
- Using the Sensor or Interpolator node, the function of each component product can be explained effectively. For example, cabinet doors can be opened and closed.

page 98 :

- The interface on the World Wide Web appears.
- A customer looks at the interface and selects each product interactively (1).
- If he/she wants to know the more information of a component product such as a function, a ~~picture~~ a size, and a photograph, he/she can see by clicking the product name. The detailed information including behavior are shown using multimedia (2).

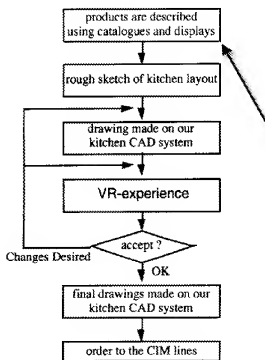


Figure 1: System Kitchen Planning Process

6. Fukuda et al. teaches all of the claimed elements but appears to be silent on whether authorization is required to access portions of the website.
7. Allsop et al. disclose the use of authorization to allow users access to portions of websites (col. 2, entire patent generally).

8. It would have been obvious to one of ordinary skill in the art at the time of the invention to carry out those steps because the use and advantages of this feature are well known to those skilled in the art, namely providing for internet security. In this respect, see col. 1 of Allsop et al.

9. Allowing for user authorization would have also been obvious because it is a choice from a finite number of identified, predictable solutions to the problem of internet security. "When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp." KSR, 127 S. Ct. at 1742, 82 USPQ2d at 1397.

10. Variations on a theme are also obvious. As a further alternative, it would have been obvious because design incentives to solve the problem of internet security would have prompted a predictable variation in the prior art system of Fukuda et al. to apply the known principle of providing internet security, disclosed in Allsop et al., in order to allow a user access the internet site of Fukuda et al., with confidence that the transactions will be secure. "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability." KSR, 127 S. Ct. at 1740, 82 USPQ2d at 1396.

11. Fukuda et al. teaches all of the claimed elements but appears to be silent on updating the amount of money remaining in the budget subsequent to indicating a choice.

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12. Bush (1966) discloses that this is an extremely well known problem – keeping track of a budget while shopping – and that it is commonly carried out. See col. 1:

In addition to the foregoing, all shoppers are cost conscious to a greater or lesser extent, and may well be induced to choose a particular store dependent upon the "sales" or reduced-cost items which may then be available there. However, the advantage of such sales may be completely lost if the customer cannot be advised thereof while in the supermarket and if the customer cannot readily locate the reduced-price items with ease.

In further addition to the foregoing, a large number of shoppers attempt to maintain the total price of the articles involved within a budgeted limit and are frequently perplexed with mental attempts to keep track of the total value of the merchandise selected and placed in the shopping cart.

Bush discloses electronic means (adding machine) to carry out the function (col. 3):

An adding machine, generally indicated at 24 is contained within the attachment 2 under the rightwardly located display space 10 for providing a running total of the items selected for purchase. The adding machine includes a plurality of keys or buttons 26 positioned on the front wall 16 of the attachment to be easily accessible to the customer. The display space 10 contains a plurality of openings or windows 28 through which the running or cumulative total of the amount registered in the adding machine is displayed. The decimal point indication may be formed or marked on the display panel. The adding machine utilized may be of any conventional design capable of indicating a running total, and preferably capable of subtraction, such as that described in United States Patent No. 2,989,231, or such as that shown and described in United States Patent No. 3,010,646. With the subtracting feature, the price of an item which is returned to the shelf may be subtracted from the running total. The adding machine provides an indication as to whether or not special or advertised items may be purchased within the limits of the customer's budget and may be an inducement to purchase additional advertised items. Also, a knowledge of the total price of the purchased items eliminates the necessity of returning items to the display shelves from the check-out counters, as often happens when the amount of money carried by the customer has been exceeded by the price of the goods. Such returns delay the check-out time and often require additional clerks to return the items while the check-out clerk remains at the cash register.

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The specification only discloses (page 12):

Optionally, during the selection process a cumulative total of the money spent and/or money available to the homebuyer may be displayed. Calculation of the available money may be based on a budget which has been determined by the builder and/or the homebuyer. By choosing the standard or upgrade options for each building component, the homebuyer can make informed decisions on the building components of their home while staying within a designated budget.

13. It would have been obvious to one of ordinary skill in the art at the time of the invention to keep track of the budget while shopping because this allows for keeping within budget.

#### **Response to Arguments**

14. Applicant's arguments, filed 5/15/2008, have been carefully considered and are not persuasive. Applicants are thanked for the amendment and arguments.

15. Applicants argue (pg. 9):

Fukuda describes a networked virtual reality kitchen design system that allows customers to create a preliminary kitchen design on the Internet and to edit the preliminary design in three-dimensional space. After reviewing and editing the preliminary design on the Internet, customers are able to send the preliminary design to a showroom and to schedule a final review of the design with a design specialist in the showroom. During the final review session, customers are required to discuss detailed planning issues and budgeting issues with the design specialist in person. Notably, Fukuda does not describe or suggest displaying electronically, based upon an indication of at least one choice from among at least one available new building option, an amount of money remaining in a designated budget.

Please note the updated rejection.

16. Applicants further argue (pg. 13):

Moreover, if art "teaches away" from a claimed invention, such a teaching supports the nonobviousness of the invention. See U.S.A. v. Adams, 148 U.S.P.Q. 479 (1996); Gillette Co. v. S.C. Johnson & Son, Inc., 16 U.S.P.Q. 2d 1923, 1927 (Fed. Cir. 1990). In light of this standard, it is respectfully submitted that the cited art, as a whole, is not suggestive of the presently claimed invention. Applicant respectfully submits that Fukuda teaches away from the present invention and, as such, supports the nonobviousness of the present invention. More specifically, Fukuda describes requiring a customer to wait for a final design review session to discuss budgeting concerns with a design specialist in person. In contrast to the present invention, Fukuda does not describe or suggest displaying electronically, based upon an indication of at least one choice from among at least one available new building option, an amount of money remaining in a designated budget. As such, the presently pending claims are patentably distinguishable from the cited combination.

Applicants have not referred to a specific passage, so it is difficult to determine whether the premise for Applicant's argument is valid and the context of any such disclosure.

17. Fukuda does disclose (page 95):

**The followings are typical steps of the initial kitchen design at home:**

**Process1: A customer decides the basic plan. The following items will be checked:**

- budget
- the plan of the room
- kitchen layout ("T"-shape, "IT", "L", "U", "peninsula", "island"-)
- included appliances (a refrigerator, a cupboard, a microwave oven, a toaster oven, and a dining table, etc.)

And (page 98):

- The interface on the World Wide Web appears.
- A customer looks at the interface and selects each product interactively (1).
- If he/she wants to know the more information of a component product such as a function, a price, a size, and a photograph, he/she can see by clicking the product name. The detailed information including behavior are shown using multimedia (2).
- Each component product is selected over and over. When all products are selected, he/she may click the button named "finished!"
- The selected products are represented (3). If he/she wishes to experience the virtual world, he may click the button named "VR". Then he/she can experience the virtual world and review the first design with the existing photograph together (4).

18. Applicants allege (pg. 14):

Additionally, the United States Supreme Court has recently held that obviousness rejections must be supported with "articulated reasoning with some rational underpinning to support the conclusion of obviousness." See KSR International Co. v. Teleflex, Inc., 127 S. Ct. 1722, 1741 (2007). The present rejection does not appear to meet this standard as it reflects no articulated reasoning why the claims are believed to be obvious, but rather is merely stated in the form of a conclusion of obviousness. It is not believed that adequate reasons why the presently claimed invention is believed to be obvious have been provided on the present record.

19. Articulated reasoning was presented. Applicants are silent in response. These allegations are abstract and are based upon a false premise. Please review the rejections. Applicants have not actually addressed the merits of the rejection nor explained why the reasoning is not articulate.

20. Applicants further allege (pg. 14):

Since there is no teaching or suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant requests that the Section 103 rejection be withdrawn.

The features are taught in the art. To argue that one would not provide for authorization to allow users access to portions of websites is not reasonable or credible. Furthermore, to argue that one would not provide for budget management is not reasonable or credible.

21. It is noted in light of KSR, that a person of ordinary skill in the art will exercise ordinary creativity, common sense and logic. The person of ordinary skill in the art is a hypothetical person who is presumed to know the relevant prior art. Custom Accessories, Inc. v. Jeffrey- Allan Indus., Inc., 807 F.2d 955, 962, 1 USPQ2d 1196, 1201 (Fed. Cir.1986). In determining this skill level, the court may consider various factors including "type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field." Id. (cited in In re GPAC, 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995)). In a given case, every factor may not be present, and one or more factors may predominate. Id. at 962-63, 1 USPQ2d at 1201.

### ***Conclusion***

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

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- Kenney (United States Patent 6381583) discloses running totals for a virtual shopping basket. Col. 10:

As the shopper moves through the virtual store displayed via the computer 20, products can be selected for purchase such as by entering data through the product information window 40 as shown in FIG. 9 (i.e., by selecting "yes" after "purchase") or by single or double clicking on the product or the "hot spot" in a distinctive manner from that used for calling up the product information. A selection can then be automatically added to one or more lists, examples of which are shown in FIG. 9. For example, the lists can be alphabetical (42), by store location (44), or by warehouse location (or other "order fill" location) (46). At least a list such as list 30 also automatically lists the number of items ordered, the unit cost and/or the total for each product, and a running total for the entire list. The programming for the computer 18 or 20 can also allow the shopper to add notes to any of the lists

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

24. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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**25. Any inquiry concerning this communication or earlier communications**

**from the examiner should be:**

directed to: Dr. Hugh Jones telephone number (571) 272-3781,

Monday-Thursday 0830 to 0700 ET,

**or**

the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, telephone number (703) 305-3900.

**mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 308-9051 (for formal communications intended for entry)

**or** (703) 308-1396 (for informal or draft communications, please label *PROPOSED* or *DRAFT*).

Respectfully submitted,

/Hugh Jones/

Primary Examiner, Art Unit 2128

July 1, 2008